

Criminal Appeal No. 210 (DB) of 1988

Against the judgment and order dated 2.3.88
Passed by Sri Aditya Sharan, Ist Additional
Sessions Judge, Madhepura, in Sessions case
No. 32 of 1987.

Shaikh Sattar

... Appellant

Versus

The State of Bihar

...Respondent

For the Appellant : Mr. Rajesh Kumar, Advocate
(Amicus Curiae)

For the Respondent : Mr. Lala Kailash Bihari Prasad,
Sr. Advocate.

P R E S E N T

Hon'ble Mr. Justice Sudhir Kumar Katriar
&

Hon'ble Mr. Justice Syed Md. Mahfooz Alam

S.K.Katriar &
S.M.M.Alam,JJ.

This appeal has been preferred by the sole appellant

Shaikh Sattar, who has been convicted under section 302 of the
Indian Penal Code, and sentenced to undergo rigorous imprisonment
for life by judgment and order dated 2.3.88, passed by the then
Additional Sessions Judge, Madhepura, in Sessions Trial No. 32 of
1987, arising out of Alam Nagar P.S. case no.71 dated 25.10.85 (G.R.
case no.1041 of 1985).

2. The prosecution case, in brief, is that accused Shaikh
Sattar (present appellant) gave a fard bayan before S.I. Md. Yasin of

Alam Nagar P.S. on 23.10.1985 at 10 AM at village Sapardah to the effect that at about 5 AM he went inside the house on hearing cry of his son and when he entered into the room and wanted to awake his wife then he noticed that she was already dead. Thereafter, he raised hulla and started making enquiry how she died. On enquiry, his mother told him that she had gone to ease herself in the morning towards the canal and when she returned back she told her that some poisonous insect might have bitten her. Since his mother was ailing, as such, she did not inform the informant, who was sleeping outside the house and when on hearing cries of his son he went inside the house he found his wife dead. He opined that due to biting of snake she might have died. On the above fard bayan of appellant Shaikh Sattar, a U.D. case bearing U.D. case no.3 dated 23.10.1985 was registered in Alam Nagar P.S. During investigation of U.D. case, Sri I. D. Ram, Officer-in-charge of Alam Nagar P.S. recorded statement of several persons of the locality including Sheikh Manjo (father of deceased Maimuna), Julekha w/o of Sheikh Manjo (mother of deceased Maimuna), Sheikh Gaffar and the above mentioned witnesses told him that three months earlier the appellant had demanded one she buffalo from his father-in-law and due to non-fulfillment of demand the appellant was very much enraged and was on inimical terms with his father-in-law. They also told him that the appellant was not ready to keep his wife Maimuna Khatoon

(deceased) in his house for which a Panchayati was convened and due to intervention of Panches he became ready to keep his wife at his house. The above witnesses further disclosed that the story that Maimuna Khatoon had died due to biting of snake was incorrect. During enquiry of U.D. Case the Officer-in-charge received the post mortem report of deceased Maimuna Khatoon in which the doctor had mentioned the cause of death of Maimuna Khatoon as asphyxia and shock due to injury nos. 3,4,and 5 which pointed out that the deceased had been killed by throttling and then the Officer-in-charge recorded his self statement and on that basis he instituted a case against the appellant and others (other accused persons have already been acquitted). He himself took up the investigation of the case. During investigation, he visited the place of occurrence, recorded the statement of the witnesses and after completing the investigation submitted charge sheet against the appellant and others, on the basis of which cognizance was taken and the case was committed to the Court of Sessions.

3. After commitment, charge under section 302 of the Indian Penal Code was framed against this appellant on 17th June, 1987. The appellant denied the charge and was put on trial along with other accused persons and by the impugned judgment the appellant was convicted but other co-accused were acquitted who were charged under section 201 of the Indian Penal Code.

4. The specific defence of the appellant, as stated above, was that he has been falsely implicated in this case and, as a matter of fact, deceased Maimuna Khatoon had died due to snake biting. However, in support of his case the appellant has neither examined any defence witness nor brought any evidence of expert on record.

5. In support of its case, the prosecution has examined altogether seven witnesses, namely, Sheikh Shaan (P.W.1), Sheikh Rayees (P.W.2), Sheikh Nago (P.W.3), Md. Majo (P.W.4), Julekha Khatoon (P.W.5), Indra Deo Ram (P.W.6) and Dr. A.K.Mandal (P.W.7). Out of the above witnesses, P.W.6 is the informant as well as the I.O. of this case, P.W.7 is the Doctor, who had conducted post mortem examination on the dead body of deceased Maimuna Khatoon, P.W.4 Md. Majo is the father of the deceased, P.W.5 Julekha Khatoon is the mother of the deceased, P.W.3 is the brother of the deceased and P.W.1 and 2 are the witnesses of the place of occurrence. As regards the documentary evidence, fard bayan has been marked as Ext.2, whereas, post mortem report has been marked as Ext.3 and the formal FIR has been marked as Ext.1. We have already stated above that the defence has not examined any witness.

6. From the perusal of the evidence of the prosecution witnesses, it appears that none of the witnesses are eye witnesses of the murder of deceased Maimuna Khatoon. The case is solely based on circumstantial evidence. It is well settled law that where the case

is based on circumstantial evidence the circumstances from which the conclusion of guilt is to be drawn should be such as to fully establish the guilt of the accused and should be consistent only with the hypothesis of the guilt of the accused and it should not leave any reasonable inference consistent with the innocence of the accused and it must be held that within all human probabilities the crime had been committed by the accused.

7. Let us see whether there is such evidence on record which can establish that the crime of murder had been alone committed by the appellant. First of all, we would like to arrive at the finding whether the death of deceased Maimuna Khatoon was homicidal or not? In this regard, first of all, we would refer the medical evidence available on record. P.W.7 is Dr. A.K.Mandal, who had conducted post-mortem examination on the dead body of deceased Maimuna Khatoon. His evidence is as follows:

“On 24.10.85, I was posted as C.A.S. Madhepura Hospital. On that date, I held P.M. on the dead body of Maimuna Khatoon w/o Sk. Sattar and found the following ante mortem injuries on her body:

- (i) Froth, mixed with blood from both nostrils.
- (ii) Froth, mixed with blood from the mouth.
- (iii) Abrasion $\frac{1}{4}$ " x $\frac{1}{8}$ " on front of the neck.
- (iv) One abrasion $\frac{1}{6}$ " x $\frac{1}{8}$ " from the neck and left to the injury no. (iii).
- (v) One abrasion $\frac{1}{6}$ " x $\frac{1}{6}$ " on the left side of the neck.

The face was slightly congested and cyanosed. On post mortem, a little amount of blood was present under the skin in subcutaneous tissues and muscles of the neck under injury nos.(iii), (iv) and (v). Slight froth were also present in trachea but it (trachea) was not fractured.

About the above mentioned injuries, P.W.7 opined that the above injuries were possibly caused by strangulation and according to him, the deceased had died due to asphyxia and shock on account of the above mentioned injuries. Thus, P.W.7, who had conducted post mortem examination on the dead body of Maimuna Khatoon, had given his clear opinion with regard to the death of deceased Maimuna Khatoon that the same was homicidal caused by strangulation. Although in cross-examination he has admitted that features of injury nos. (i) and (ii) also remain present in the case of snake biting but immediately clarified that other injuries i.e. injury nos. (iii), (iv) and (v) are not possible due to biting by snake and generally those injuries are caused due to strangulation and pressure upon the neck. There is no reason to differ with the opinion of the doctor, who is definitely an expert with regard to the nature of injuries. Moreover, opinion of P.w.7 that those injuries could not be caused due to biting of snake had not been challenged by the accused and has not been negated in the statement of the appellant recorded under section 313 of the Code of Criminal Procedure. Thus, the

evidence of P.W.7 clearly establishes that the death of Maimuna Khatoon was homicidal and not possible due to biting of snake.

8. Let us see whether in this regard there is corroborating evidence on record or not? At the very outset, we would like to say that the prosecution has brought sufficient materials on record by examining several witnesses to prove that the death of Maimuna Khatoon was homicidal and it appears that all the witnesses from P.W.1 to 6 have supported this fact that the deceased was murdered. It is true that all the prosecution witnesses are not the witnesses of the actual murder but they all had opportunity to see the dead body of the deceased and they all have deposed on oath that they had seen mark of violence on the dead body of the deceased and froth was coming from the mouth and nostrils of the deceased, tongue of the deceased was protruded and there were marks of finger around the neck of the deceased. This evidence coupled with the evidence of P.W.7 that he had found at least three injuries around the neck of the deceased which could have been caused by pressure upon the neck establishes beyond doubt that the deceased was murdered. In this regard, para 6 of P.W.1, para 2 of P.W.2, para 3 of P.W.3, para 5 of P.W.4, para 7 of P.W.5 are relevant. The paragraphs referred above of the respective witnesses will show that all the witnesses have deposed that in the morning on hearing halla that Maimuna Khatoon had died due to biting of snake, they went inside the house of the

appellant and got opportunity to see the dead body of the deceased Maimuna Khatoon. They clearly noticed that Maimuna Khatoon did not die of snake bite but she was killed as they found mark of violence around her neck and froth as well as blood was oozing out from the mouth and nostrils. This ocular evidence of the witnesses are very vital when the same is read along with the evidence of P.W.7. Out of the five witnesses examined on behalf of the prosecution, three are father, mother and brother of the deceased. They had no grudge against the appellants to falsely depose in order to falsely implicate him with serious crime of murder. There is possibility that P.W. 1 and 2, to whom the defence had put a question that proceeding under section 107 Cr.P.C. was going on in between the two witnesses and the appellant, may falsely implicate the appellant but there is no reason that P.W. 3, 4 and 5 will depose falsely against the appellant.

9. We have gone through the cross-examination of the above said witnesses and we must say that the cross-examination was misdirected and the cross-examination was done on the points which were never relevant with the facts of this case. So, we do not want to encumber the record by needlessly discussing the same. The evidence discussed above fully establishes that the death of deceased Maimuna Khatoon was homicidal.

10. Now, the question remains whether the appellant or any other person had committed the murder of deceased Maimuna Khatoon? As per the defence itself even if it is admitted that Maimuna had gone to ease herself in the morning hours but it is admitted position that she returned back to her house alive. It is a matter to be believed or disbelieved that she told her mother-in-law that some poisonous insect had bitten her but the circumstances show that this statement was false as the doctor had found that she did not die due to biting of snake or any poisonous insect. It is admitted position that the appellant is the husband of the deceased and it is also admitted position that he had made out a false story that deceased died due to biting of snake but he miserably failed to establish this story although he was the only person, being the husband of the deceased, to know as to how the deceased had sustained injuries on her person which resulted in her death. Under such circumstances, the only conclusion is that he and only he is the man, who had committed murder of Maimuna Khatoon, who was his wife and on the date of occurrence admittedly she was in his house. So, the chain of circumstances is such which clearly points out the guilt of the appellant. Therefore, we are of the opinion that it is a well proved case and we are of the view that the appellant was rightly convicted and sentenced.

11. In the result, we do not find any merit in this appeal and, as such, the same is hereby dismissed. The judgment of conviction and sentence passed against the appellant under section 302 of the Indian Penal Code is hereby upheld. The bail bond of the appellant is hereby cancelled and he is directed to surrender before the court below to serve out the remaining part of his sentence.

12. The learned Amicus Curiae will be paid rupees two thousand as his fee from the High Court Legal Services Committee, Patna.

(S. K. Katriar, J.)

(Syed Md. Mahfooz Alam,J.)

